

STATE OF MICHIGAN
COURT OF APPEALS

SHAW AVIATION, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

April 20, 2006

No. 259413

Tax Tribunal

LC No. 00-298119

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ

PER CURIAM.

Petitioner appeals as of right a judgment of the Michigan Tax Tribunal (MTT) concluding that it was not entitled to a “resale” exemption under the Use Tax Act (UTA), MCL 205.91 *et seq.*, pursuant to MCL 205.94(1)(c). We affirm.

Petitioner is a Michigan corporation. On September 11, 2000, petitioner purchased a Cessna aircraft in Indiana and brought the aircraft into Michigan the following day. The aircraft was allegedly sold in early 2003.¹ Petitioner paid neither sales tax nor use tax during the period of ownership of the aircraft, claiming the exemption allowed where goods are bought solely for the purpose of resale. Respondent assessed petitioner a \$77,100.00 use tax and \$38,550.00 penalty, plus interest.

Petitioner sought review of respondent’s assessment before the MTT, arguing that it was exempt from the tax because it purchased the aircraft with the intent to resell it. The parties stipulated to submit briefs in lieu of a hearing, and a joint stipulation of facts and exhibits was filed. The parties stipulated that petitioner was issued an Aircraft Dealer license by the Michigan Aeronautics Commission each year for the time period covering September 11, 2000 through December 31, 2003, but that petitioner did not acquire a Sales Tax License during those years. The parties also stipulated that petitioner was issued an Aircraft Registration Certificate by the Michigan Department of Transportation on June 13, 2002, providing that petitioner’s aircraft was to be used for demonstration purposes only, and that the aircraft’s Hobbs Meter recorded only 32.1 hours of flight time between September 12, 2000 and February 31, 2003. The stipulated

¹ Petitioner provided an undated bill of sale as an exhibit in the initial proceeding.

exhibits included maintenance records that accounted for some, but not all, of the aircraft's flight hours. With the record limited to these stipulations, the MTT concluded that petitioner had failed to meet its burden of establishing that it purchased the aircraft solely with intent to resell the aircraft, and thus that it was entitled to the UTA exemption.

Petitioner argues that the MTT erred in concluding that petitioner did not meet its burden of establishing entitlement to the resale exemption. We disagree. Our review of MTT decisions "is limited to deciding if the tribunal's factual findings are supported by competent, material, and substantial evidence on the record. . . . Substantial evidence is 'the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion,' and it may be 'substantially less than a preponderance.'" *Inter Coop Council v Dep't of Treasury*, 257 Mich App 219, 221-222; 668 NW2d 181 (2003), quoting *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994); see also Const 1963, art 6, § 28. In addition, "[w]here parties agree to submit a case on stipulated facts, . . . [we] generally accept those facts as conclusive." *Kaiser Optical Systems v Dep't of Treasury*, 254 Mich App 517, 520; 657 NW2d 813 (2002). "In the absence of an allegation of fraud, . . . review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle." *Inter Coop Council, supra* at 221. "While statutory interpretation is a question of law that is reviewed de novo, we generally defer to the Tax Tribunal's interpretations of the statutes it administers and enforces." *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

"The use tax under the UTA complements the sales tax and is designed to cover those transactions not covered by Michigan's General Sales Tax Act," MCL 205.51 *et seq.* *WPGPI, Inc v Dep't of Treasury*, 240 Mich App 414, 416; 612 NW2d 432 (2000). Section 3(1) of the UTA provides for "a specific tax for the privilege of using, storing, or consuming tangible personal property in this state." MCL 205.93(1). Section 4(1)(c) provides that "[p]roperty purchased for resale" is exempt from this tax. MCL 205.94(1)(c).

"Tax exemptions are disfavored, and the burden of proving an entitlement to an exemption is on the party claiming the right to the exemption." *Guardian Industries Corp v Dep't of Treasury*, 243 Mich App 244, 249; 621 NW2d 450 (2000). Whether a taxpayer is entitled to claim an exemption under § 4(1)(c) is determined by examining the taxpayer's intent at the time of the product acquisition, by reference if necessary, to subsequent surrounding uses and circumstances. *Corporate Flight, Inc v Dep't of Treasury*, 469 Mich 852; 666 NW2d 665 (2003); *People v Rodriguez*, 463 Mich 466, 467-472; 620 NW2d 13 (2000).

The burden on a petitioner challenging a decision of an administrative body is weighty, and we find that here petitioner has not met that burden. We conclude that the MTT's finding that petitioner did not purchase the aircraft at issue solely with intent to resell is supported by sufficient evidence. Petitioner presented no evidence that it had bought or sold aircraft before, and while petitioner did acquire an Aircraft Dealer license on the day petitioner acquired this aircraft, petitioner did not acquire the required sales or use tax licenses. Petitioner presented evidence that the aircraft had been advertised on one website and listed with one broker for a

minimum period of 90 days beginning March 23, 2001, but petitioner did not establish that the aircraft had been continually advertised for sale during the time petitioner owned it.² The MTT concluded that these facts tended to establish that petitioner was not “in the business of selling aircraft, and therefore, did not acquire the aircraft with the intent to sell it.” MCL 205.95(1). This reasoning accords with our Supreme Court’s jurisprudence. *Rodriguez, supra* at 469, 472. Additionally, the stipulated exhibits indicate that the aircraft accumulated approximately 32 hours of flight time during petitioner’s period of ownership. Petitioner produced maintenance logs from several airports purportedly to account for the flights, but did not produce any other evidence, such as flight logs, to support the contention that all of the flight hours logged were for purposes of maintenance or demonstration. Accordingly, the MTT conclusion that petitioner failed to demonstrate its entitlement to the § 4(1)(c) exemption is supported by the record evidence. *Guardian Industries Corp, supra* at 249; *Inter Coop Council, supra* at 221.

Petitioner argues that the MTT erred by failing to consider additional evidence it submitted, independent of the parties’ stipulation. We disagree. MCR 2.116(A) provides that “[t]he parties to a civil action may submit an agreed-upon stipulation of facts to the court.”³ “In general, when a case is submitted to a governmental agency on stipulated facts, . . . those facts are to be taken as conclusive.” *Columbia Assoc v Dep’t of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). Nonetheless, it is within the discretion of the tribunal to permit or consider additional proofs even in circumstances where the parties’ stipulation is not contradicted. *Kennedy v Auto-Owners Ins Co*, 87 Mich App 93, 98; 273 NW2d 599 (1978). Under the circumstances of this case, we see no abuse of discretion on the part of the tax tribunal in its decision not to consider petitioner’s additional documentation. See *Kennedy, supra* at 98; *Columbia Assoc, supra* at 665.

This outcome turns on the deference due the administrative body interpreting and applying its rules. A reasonable trier of fact might have reached the opposite conclusion on these facts, but that is not the relevant standard. Because the MTT’s decision is supported by competent, material, and substantial evidence on the record, the decision is affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

² Although the MTT did not note this fact, we find it noteworthy that the asking price for the aircraft when the broker agreement was signed on March 23, 2001 was \$1,695,000, with a 4% fee from the seller to the broker, and the purchase price petitioner paid for the aircraft on September 11, 2000 was \$1,700,000.

³ The MTT rules of practice and procedure provide that “[i]f an applicable entire tribunal rule does not exist, the 1995 Michigan Rules of Court, as amended . . . shall govern.” 1999 AC, R 205.1111(4). Therefore, provisions of the Michigan Court Rules apply, where applicable, to MTT dispositions.